

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ALLEN PLYLER,)	
)	
Plaintiff,)	
)	CIVIL ACTION NO. 08-CV-6637
v.)	
)	
WHIRLPOOL CORPORATION,)	
)	
Defendant.)	
)	
)	
)	

**DEFENDANT’S BRIEF IN OPPOSITION TO MOTION IN LIMINE TO
EXCLUDE EVIDENCE THAT THE MICROWAVE WAS ON SELF-
CLEANING MODE**

Plaintiff moves to exclude evidence that the microwave was in self-cleaning mode at the time of the fire. See Docket No. 109. Whirlpool has never made this argument nor does it intend to argue this at trial. In fact, there is no self-cleaning feature on the microwave.

Rather, it is the Plaintiff who has promoted this argument. Plaintiff claimed that his house guest, Ms. Stuckey, placed the microwave “in the cleaning mode” before going to bed. See October 25 Settlement Demand letter, a courtesy copy of which was furnished to the Court. Whirlpool, does not intend to argue facts that are not in evidence. Nor does it intend proffer this evidence. However, if Ms. Stuckey appears and testifies that she put the microwave in the “cleaning” or self-cleaning” mode, Whirlpool should be allowed to argue any implications derived

from that testimony. See United States v. Henningsen, 387 F.3d 585, 590 (7th Cir. 2004)(Copy attached)(finding that the jury was entitled to assess the credibility of the defendant's testimony and draw inferences from the rest of the evidence to conclude that the defendant intended to defraud contributors); and United States v. Welch, No. 07 C 4333, 2009 U.S. Dist. LEXIS 46350, *35-37 (N.D. Ill. June 2, 2009)(Copy attached)(finding that the prosecutor's statements regarding the testimony of certain witnesses were proper because they were based on inferences taken from the evidence presented at trial).

This 24th day of January, 2012.

WHIRLPOOL CORPORATION

By: /s/ Michael D. Hostetter
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